IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN THE MATTER OF THE	)	
COMPLAINT OF CENTRAL	)	
CONTRACTING & MARINE, INC. FOR	)	Case No. 4:15-cv-01111-HEA
EXONERATION FROM, OR	)	In Admiralty
LIMITATION OF, LIABILITY.	)	

THOMAS INDUSTRIAL COATINGS, INC.'S ANSWER AND CLAIM IN RESPONSE TO CENTRAL CONTRACTING & MARINE, INC.'S FIRST AMENDED COMPLAINT AND THIRD PARTY COMPLAINT

COMES NOW Claimant Thomas Industrial Coatings, Inc. ("Thomas" or "Claimant"), by and through its counsel, Fox Galvin, LLC, and for its Answer and Claim in response to Central Contracting & Marine, Inc.'s ("Central") First Amended Complaint and Third Party Complaint ("Complaint"), states as follows:

ANSWER TO FIRST AMENDED COMPLAINT

1. Thomas admits that Central seeks relief under the laws of the United States providing for limitation of vessel owners' liability, 46 U.S.C. §§ 30501-30512, and the various statutes, rules, and regulations relating thereto, but Thomas denies that Central is entitled to exoneration from or limitation of liability. Defendant admits the allegations contained in the second and third sentences of paragraph 1.

2. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint.

3. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint.

4. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint.

5. Thomas denies the allegations contained in paragraph 5 of the Complaint.

6. Thomas admits the allegations contained in paragraph 6 of the Complaint.

7. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint.

9. Thomas admits that on July 16, 2015, the M/V DANNY BRADFORD struck the Eads Bridge and the SafeSpan attached thereto while proceeding downriver with two loaded barges in tow. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 9 of the Complaint.

10. Thomas admits that the M/V DANNY BRADFORD struck the Eads Bridge and the SafeSpan attached thereto. Thomas denies the remaining allegations in paragraph 10 of the Complaint.

11. Thomas admits that on July 16, 2015, James Pigue was on the SafeSpan working on the rehabilitation project when the M/V DANNY BRADFORD struck the Eads Bridge and the SafeSpan. Thomas denies all other allegations set forth in paragraph 11 of the Complaint.

12. Thomas admits that Mr. Pigue died as a result of the incident. Thomas denies the remaining allegations in paragraph 12 of the Complaint.

13. Thomas admits that some of the SafeSpan was damaged or lost during the incident. Thomas denies all other allegations contained in paragraph 13.

14. Thomas denies the allegations contained in paragraph 14 of the Complaint.

15. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Complaint.

16. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Complaint.

17. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the Complaint.

18. Thomas admits that Central claims and seeks exoneration from liability for any losses, damages, or injury occasioned or incurred during the voyage or by reason of the incident, and for any and all claims arising therefrom, but Thomas denies that Central is entitled to exoneration or limitation, and Thomas denies that Central has valid defenses to the claims against it.

19. Thomas lacks the knowledge or information sufficient to form a belief as to whether the claims asserted against Central and/or the M/V DANNY BRADFORD as a result of said incident will exceed Central's interest in the M/V DANNY BRADFORD and its pending freight. Thomas admits that Central claims the benefits of the Limitation of Vessel Owners' Liability Act provided under Title 46, United States Code, §§ 30501-30512, inclusive, and the various statutes, rules, and regulations supplemental thereto, but Thomas denies that Central is entitled to limit its liability.

20. Thomas admits that the Complaint is timely, but denies all other allegations contained in paragraph 20.

21. Thomas denies that "all and singular, the premises are true," but admits that the Complaint is exclusively within the Admiralty and Maritime Jurisdiction of the United States and this Honorable Court.

AFFIRMATIVE DEFENSES

As and for its Affirmative Defenses, Thomas states:

1. The Complaint fails to state a claim upon which relief can be granted.

2. The incident resulted from the unseaworthiness of the M/V DANNY BRADFORD existing on or before the date of July 16, 2015, and/or Petitioner's negligence, all of which was within Petitioner's privity and knowledge.

3. Central's M/V DANNY BRADFORD allided with a stationary object in broad daylight and clear weather and, therefore, Central has the burden of proving the absence of fault or inevitable accident. The Oregon, 158 U.S. 186 (1895).

4. In the event that Central violated applicable statutes and regulations, it is presumed that said statutory and/or regulatory violations were the sole cause or at least a contributing cause of the incident, and Central can avoid liability only by showing that said statutory and/or regulatory violations could not have been a cause of the incident. The Pennsylvania, 86 U.S. (19 Wall) 125 (1874).

5. Petitioner has failed to comply with the requirements of the Limitation of Liability Act, 46 U.S.C. §§ 30501-30512, and Rule F for the Supplemental Rules for Certain Admiralty and Maritime Claims including, but not limited to, the inadequacy of the limitation fund and the failure to deposit adequate and proper security, which will act to bar limitation of or exoneration from liability herein. Thomas reserves the right to contest the amount of the limitation fund and the security provided in connection therewith.

WHEREFORE, Claimant Thomas Industrial Coatings, Inc., respectfully requests that this Court enter its Judgment denying Petitioner's request for exoneration from, or limitation of liability, granting all relief sought by Claimant Thomas Industrial Coatings, Inc., plus interest and costs, and granting such other and further relief to Claimant Thomas Industrial Coatings, Inc., as the Court deems proper.

ANSWER TO CENTRAL CONTRACTING & MARINE, INC.'S
THIRD PARTY COMPLAINT

COMES NOW Thomas Industrial Coatings, Inc. ("Thomas" or "Claimant/Third Party Defendant"), by and through its counsel, Fox Galvin, LLC, and for its Answer to Central Contracting & Marine, Inc.'s ("Central") Third Party Complaint ("Third Party Complaint"), states as follows:

1. Thomas admits the allegations contained in paragraph 1 of the Third Party Complaint.

2. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Third Party Complaint.

3. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Third Party Complaint.

4. Thomas admits the allegations contained in paragraph 4 of the Third Party Complaint, except the allegation that the material used to clean the steel surfaces was sand, which Thomas denies.

5. Thomas admits that St. Louis Bridge was the general contractor for the rehabilitation project. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 5 of the Third Party Complaint.

6. Thomas admits the allegations contained in paragraph 6 of the Third Party Complaint.

7. The allegations contained in paragraph 7 of the Third Party Complaint are legal conclusions to which no response is necessary. To the extent the allegations are construed as requiring a response, the allegations are denied to the extent the allegations are inconsistent with controlling law.

8. The allegations contained in paragraph 8 of the Third Party Complaint are legal conclusions to which no response is necessary. To the extent the allegations are construed as requiring a response, the allegations are denied to the extent the allegations are inconsistent with controlling law.

9. Thomas admits that Central was the operator of the M/V DANNY BRADFORD. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 9 of the Third Party Complaint.

10. Thomas admits that on July 16, 2015, the M/V DANNY BRADFORD struck the Eads Bridge and the SafeSpan attached thereto. Thomas denies the remaining allegations contained in paragraph 10 of the Third Party Complaint.

11. Thomas admits that on July 16, 2015, James Pigue was on the SafeSpan on the Eads Bridge working on the rehabilitation project when the M/V DANNY BRADFORD struck the Eads Bridge and the SafeSpan. Thomas denies all other allegations contained in paragraph 11.

12. Thomas denies that Mr. Pigue did not have fall protection.

13. Thomas admits that Mr. Pigue died as a result of the incident. Thomas denies the remaining allegations in paragraph 13 of the Third Party Complaint.

14. Thomas lacks the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Third Party Complaint.

15. Thomas denies the allegations directed to Thomas in paragraph 15 of the Third Party Complaint and all subparts contained therein.

16. Thomas denies the allegations contained in paragraph 16 insofar as they are directed at Thomas.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses to Central's Third Party Complaint, Thomas states:

1. Central's Third Party Complaint fails to state a claim against Thomas upon which relief can be granted.

2. Central's alleged damages, if any, were not caused by any act or omission by Thomas, but were the result of an independent intervening and/or superseding cause for which Thomas is not responsible.

3. Central's M/V DANNY BRADFORD allided with a stationary object in broad daylight and clear weather and, therefore, Central has the burden of proving the absence of fault or inevitable accident. The Oregon, 158 U.S. 186 (1895).

4. Central's negligence and/or the unseaworthiness of the M/V DANNY BRADFORD were the sole cause of the incident.

5. In the event that Central violated applicable statutes and regulations, it is presumed that said statutory and/or regulatory violations were the sole cause or at least a contributing cause of the incident, and Central can avoid liability only by showing that said statutory and/or regulatory violations could not have been a cause of the incident. The Pennsylvania, 86 U.S. (19 Wall) 125 (1874).

6. In the event that this Court should find that any fault by Thomas was a proximate cause of the incident, which Thomas denies, Thomas alleges that any recovery by Central against Thomas should be reduced by the comparative fault of Central and/or other third parties or instrumentalities for whom Thomas is not responsible.

WHEREFORE, Thomas Industrial Coatings, Inc., respectfully requests that this Court enter its judgment denying all relief sought by Petitioner and awarding Thomas Industrial

Coatings, Inc., its costs incurred herein and such other and further relief as the Court deems just and proper.

CLAIM

COMES NOW Claimant, Thomas Industrial Coatings, Inc. ("Thomas"), by and through its counsel, Fox Galvin, LLC, and for its Claim pursuant to Supplemental Rule F(5) of the Federal Rules of Civil Procedure, alleges as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and is brought for relief pursuant to general maritime law.

2. This claim is filed in accordance with Rule F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims on or before the date specified by Order of the Court.

3. Claimant Thomas is, and was at all relevant times, a corporation duly organized and existing under the laws of the State of Missouri with its principle place of business in Missouri.

4. Central Contracting & Marine, Inc. ("Central"), upon information and belief, was and is now a corporation duly organized and existing under law.

5. The Eads Bridge is a U.S. National Historic Landmark completed in the year 1874. It is located at or about Mile 180 of the Upper Mississippi River. It spans the Mississippi River between St. Louis, Missouri, and East St. Louis, Illinois. Vessels have been traveling on the Mississippi River under the center span of the Eads Bridge for over 140 years. At the time of the incident, the channel for passage under the center span of the Eads Bridge was marked by two (2) triangular shaped channel markers on the bridge, one favoring the Missouri side of the center span, and the other favoring the Illinois side of the center span.

6. On July 16, 2015, pursuant to a contract with St. Louis Bridge Construction Company ("St. Louis Bridge"), Thomas was performing surface recoating work on the Eads Bridge (hereinafter the "rehabilitation project"), including the steel comprising the arch spans of the bridge. A scaffolding system known as "SafeSpan" was attached to the arch spans of the Eads Bridge in order to give workers access to the bridge structure.

7. On July 16, 2015, the M/V DANNY BRADFORD with two barges in tow was moving downstream when it struck the Eads Bridge and the SafeSpan. The point of contact between the M/V DANNY BRADFORD and the Eads Bridge and the SafeSpan was near the Missouri pier of the center span substantially outside of the channel markers on the bridge.

8. Mr. James Pigue, an employee of Thomas, was on the SafeSpan working on the rehabilitation project when the M/V DANNY BRADFORD struck the Eads Bridge and the SafeSpan. Mr. Pigue was killed as a result of the M/V DANNY BRADFORD's collision with the Eads Bridge and the SafeSpan.

9. The M/V DANNY BRADFORD also caused extensive damage to the SafeSpan and other equipment and property belonging to Thomas, and delayed Thomas's work on the bridge.

10. Central owed a duty to Thomas to operate its vessels in a reasonably prudent manner when transiting the Upper Mississippi River at or near the Eads Bridge and had a duty to have and keep the M/V DANNY BRADFORD in a seaworthy condition.

11. Central was negligent including, but not limited to, the following:

a. failed to navigate the M/V DANNY BRADFORD in a reasonably careful and prudent manner;

b. failed to maintain the M/V DANNY BRADFORD in a reasonably careful and prudent manner;

c. failed to have competent and experienced crew on the voyage;

d. failed to promulgate and enforce adequate safety and operations policies;

e. failed to recognize an impending danger and take corrective action;

f. failed to assign a pilot to the M/V DANNY BRADFORD that had the requisite skill, experience, and qualifications to navigate the M/V DANNY BRADFORD and tow on the Upper Mississippi River in the conditions present on July 16, 2015;

g. failed to exercise due care under the circumstances then and there existing;

h. violated applicable laws, rules, and regulations regarding the safe navigation and operation of the M/V DANNY BRADFORD; and/or

i. all other reasons as will be revealed in discovery.

12. The M/V DANNY BRADFORD was unseaworthy on July 16, 2015, due to mechanical deficiencies, an inadequate crew, and all other reasons as will be revealed in discovery.

13. The negligence of Central, and the unseaworthiness of the M/V DANNY BRADFORD, were within Central's privity and knowledge.

14. As a direct and proximate result of the negligence of Central and the unseaworthiness of the M/V DANNY BRADFORD, Thomas has incurred or will incur damages in an amount exceeding $300,000 for the uninsured portion of: worker's compensation benefits paid to Mr. Pigue's family, property damage to the SafeSpan, loss of materials and equipment, delay damages, and additional labor and supervision.

WHEREFORE, Claimant Thomas Industrial Coatings, Inc. prays that this Court will enter judgment in its favor against Central Contracting & Marine, Inc., for all of Thomas's damages, costs, and expenses incurred herein, and grant such other and further relief as the Court deems just and proper.

/s/ Theodore H. Lucas
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CERTIFICATE OF SERVICE

The undersigned certifies that service was made by means of the Notice of Electronic Filing, this 1st day of October, 2015, to the following counsel of record:

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